

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BYRON DEAN WALLER,

Plaintiff,

v.

No. CIV 14 -921 GBW/KBM

MICHAEL JAMES WALLER and PAULA WALLER,

Defendants.

ORDER

This matter is before the Court on Plaintiff's Motion to Waive all Costs, Doc. 10. For the reasons stated below, the Court will **DENY** the motion. The Court will also **ORDER** the Clerk of the Court to notify Defendants that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d).

Plaintiff filed a Complaint alleging that Defendants “interfered with his gift or inheritance by way of fraud, duress, and undue influence.” Doc. 1 at 16. Plaintiff also filed an Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 4 (“Motion to Proceed IFP”), pursuant to 28 U.S.C. § 1915. The Court granted Plaintiff’s Motion to Proceed IFP and, because Plaintiff is a prisoner, waived an initial partial payment, notified Plaintiff that he is required to pay the full amount of the filing fee pursuant to 28 U.S.C. § 1915(b)(1), and ordered Plaintiff to “file monthly financial certificates and make monthly payments of twenty per cent (20%) of the preceding month’s income credited to his account or show cause why the payment should be excused.” Doc. 5.¹

Plaintiff now moves the Court to “waive all court fees and costs until a later date, not yet determined, in order to save valuable time and money.” Doc. 10. Plaintiff argues that:

¹ The Court’s Order inadvertently referred to Plaintiff’s Complaint as a civil rights complaint.

Plaintiff owns nothing and has not had any money on his account for over three years. Plaintiff's monthly forms, required signatures, paper, envelopes, postage, etc. would be a waste of this Honorable Court's time and money. Plaintiff will notify this court immediately in [the] event he receives any money.

Doc. 10. The Court construes Plaintiff's Motion to Waive All Costs to include a request that Plaintiff not be required to file monthly financial certificates.

The Court will deny Plaintiff's Motion to Waive All Costs. The statute governing proceedings *in forma pauperis* states that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner *shall* be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1) (*emphasis added*). The statute also states that "the prisoner *shall* be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. § 1915(b)(2) (*emphasis added*). Plaintiff has not cited any legal authority which creates an exception to the requirements in the statute governing proceedings *in forma pauperis*. Because the Court is denying Plaintiff's Motion to Waive All Costs, Plaintiff must file monthly financial certificates as ordered in the Court's Order granting Plaintiff's Motion to Proceed IFP, Doc. 5.

The statute governing proceedings *in forma pauperis* provides that the "officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]." 28 U.S.C. § 1915(d). Because Plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915, the Court will order the Clerk of the Court to notify Defendants that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d).

IT IS ORDERED that Plaintiff's Motion to Waive all Costs, Doc. 10, filed October 31, 2015, is **DENIED**.

IT IS ALSO ORDERED that the Clerk of the Court notify Defendants, using the address provided in the Complaint, Doc. 1 at 7, that an action has been commenced and request that

Defendants waive service pursuant to Fed. R. Civ. P. 4(d). If Defendants do not return the waiver within 45 days after the request is sent, then the United States Marshal shall serve a copy of the Summons and Complaint on Defendants.


UNITED STATES CHIEF MAGISTRATE JUDGE